IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8161 OF 2004

Shri Dadaji Maharu Patil .. Petitioner.

Vs

1. Smt. Kausabai Bajirao Patil and ors Respondents.

Mr N.R.Bubna for the petitioner.

CORAM : D.B.BHOSALE,J.

DATE : 19th October, 2004.

PC:

1. This petition is directed against the judgment and order dated 31.8.2004 passed in Misc. Application No.23 of 2004, by which the application filed under section 5 of the Limitation Act seeking condonation of delay in preferring the appeal against the judgment and decree dated 29.6.1992 in R.C.Suit No.251 of 1989, has been rejected.

2. Admittedly, there was a delay of 12 years in filing the appeal. Mr.Bubna, learned counsel for the petitioner, challenged the impugned order on two grounds. Firstly, he submitted that for the negligence of the lawyer, who failed to file written statement in the suit, the petitioner cannot be made to suffer, and secondly, that the petitioner was not served in the execution proceedings bearing Regular Darkhast

No.144/98.

3. I heard the learned counsel for the parties, perused the impugned order dated 31.8.2004 and the other material placed before me. It is clear from the facts of this case that though the petitioner was served in the suit, he did not file written statement and allowed the suit to proceed exparte against him. After having engaged an advocate, he never bothered to enquire about the matter till it was disposed of by the trial court. Thereafter, the petitioner was served with the notice in Regular Darkhast No.144 of 1998 on 4.10.98. The record shows that the bailiff had served the notice of Darkhast on the petitioner on 4.10.98. At this stage, the petitioner did not engage an advocate nor did he appear in Darkhast proceedings and when the Darkhast proceedings reached the final stage in 2004 he filed appeal challenging the judgment and decree dated 29.6.1992 passed in the suit. The report of the bailiff is on record. The learned Judge considered the material placed before him in a proper perspective and rightly rejected the application with the following observations:

> "During the course of hearing the record and proceeding of the R.C.S.No.251/89 were called.

If the proceedings are perused then it shows that present applicant appeared through the advocate but failed to file his written statement and, therefore, the order of no written statement was passed on 6.11.90. The evidence in the case was recorded on 25.6.92 and the suit was disposed of by the judgment dated 29.6.1992. The applicant though claimed that he has persuaded the matter by making contact to his earlier advocate but to support his contention except his bare words there is nothing on record. The suit was of the year 1989 and the present application with appeal came to be filed in the year 2004. Though meticulous explanation is to be given by the applicant but he has to give satisfactory explanation before considering his case for condoning the delay. The case of applicant also gets set back from the fact that he was served with the notice of R.D.No.144/98 on 4.10.98. Though applicant tried to contravene it by filing affidavit at Exh.15 but according to me it was after thought. The bailiff who has served notice of the darkhast in his report clearly mentioned that he has made personal service on J.D.s including the applicant. Therefore when the applicant was served with the darkhast in the

year 1998 there is absolutely no explanation forthcoming on behalf of applicant as to why he kept silence since the year 1998 till the year 2004. The case law relied on by the advocate for applicant differs on factual facts of the present case. If the evidence of plaintiff has recorded before the Court and if the judgment of the trial Court is considered then oral and documentary evidence has been appreciated and then judgment and decree was passed and, therefore, the applicant failed to make out a case including the long delay of 12 years in preferring the appeal."

4. Keeping the aforesaid observations in view and considering the material placed before me and the submissions of Mr Bubna, I am satisfied that the petitioner has failed to show sufficient cause to condone the delay of 12 years in filing the appeal. I find no reason to interfere with the order passed by the Court below in the supervisory jurisdiction of this Court under article 227 of the Constitution of India. The writ petition, therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)